

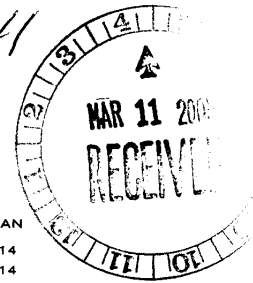
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March 11, 2005

BY MESSENGER

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K St., N.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings

Part of
Public Record

Re: Finance Docket No. 34672; Union Pacific Railroad Company -- Acquisition and Operation Exemption -- Line of the Burlington Northern and Santa Fe Railway Company

Dear Secretary Williams:

I enclose the following material for filing in the above proceeding:

1. An original and ten (10) copies of a Petition for Exemption covering the transaction proposed in the above proceeding.
2. A payment form in the amount of \$5,300.00 for the filing fee required by 49 C.F.R. § 1002.2(f), Part IV (41)(vi).
3. Twenty (20) unbound copies of the Exhibit 2 maps.

Please indicate receipt of the enclosed materials by returning a stamped copy of this letter in the self-addressed, stamped envelope enclosed for this purpose.

Sincerely,

Linda J. Morgan
Linda J. Morgan

FILED

MAR 14 2005

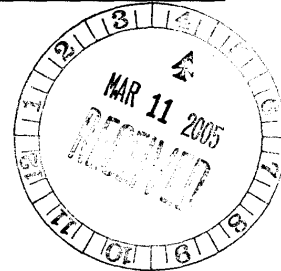
SURFACE
TRANSPORTATION BOARD

Enclosures

213541

CONTAINS COLOR IMAGES

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 34672

UNION PACIFIC RAILROAD COMPANY
-- ACQUISITION AND OPERATION EXEMPTION --
LINE OF THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY COMPANY

PETITION FOR EXEMPTION

ENTERED
Office of Proceedings

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UNION PACIFIC RAILROAD COMPANY

FILED
MAR 14 2005
SURFACE
TRANSPORTATION BOARD

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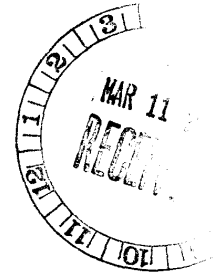
FILED

MAR 14 2005

**SURFACE
TRANSPORTATION BOARD**

Dated: March 11, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 34672

UNION PACIFIC RAILROAD COMPANY
-- ACQUISITION AND OPERATION EXEMPTION --
LINE OF THE BURLINGTON NORTHERN
AND SANTA FE RAILWAY COMPANY

PETITION FOR EXEMPTION

In this petition, Union Pacific Railroad Company ("UPRR"), a Class I rail carrier, requests that the Board, pursuant to 49 U.S.C. § 10502(a), exempt from 49 U.S.C. §§ 11323, et seq., UPRR's proposed acquisition and operation of the Burlington Northern and Santa Fe Railway Company's ("BNSF") line from Rockview, Missouri at BNSF Milepost 141.8 to Sikeston, Missouri at BNSF Milepost 165.5 (the "Line"). The Key Proposed Terms of this transaction are attached at Exhibit 1. The Line is shown on the maps attached as Exhibit 2.

We identify the parties to this acquisition and operation transaction in Part I below. Part II describes the transaction and its benefits. Part III explains why this transaction should be exempt from regulation. The verified statement of George Sturm of UPRR supports this Petition.

SUMMARY

UPRR and BNSF have agreed on a line exchange and trackage rights transaction which will enhance the efficiency and competitiveness of both the UPRR and the BNSF systems.¹ This petition requests that the Board exempt the acquisition of the Line from the prior approval requirements of 49 U.S.C. §§ 11323, et seq., because this transaction falls within the parameters of 49 U.S.C. § 10502(a).

Because UPRR will acquire “property of another rail carrier,” the Board has jurisdiction under 49 U.S.C. § 11323(a)(2) over UPRR’s acquisition of the Line. Under 49 U.S.C. § 10502(a), however, this acquisition should be exempt from regulation. UPRR’s acquisition of the Line will promote several elements of the rail transportation policy of 49 U.S.C. § 10101 without running afoul of any. The transaction is of limited scope, and does not lessen any rail competition. To the extent that the transaction has a competitive effect, it will benefit shippers by enhancing the efficiency of UPRR service.

I. IDENTITY OF PETITIONERS

A. Transferee

Transferee, UPRR, a Delaware Corporation, is a Class I rail carrier, subject to the provisions of Subtitle IV of Title 49 of the United States Code, 49 U.S.C. §§ 10101, et seq. (the “Act”). Union Pacific owns and operates lines of railroad in 23 States in the western and midwestern United States, including the States of Arizona, Arkansas, California, Colorado,

¹ In return for transferring the Rockview-Sikeston line to UPRR, BNSF will acquire UPRR’s line between Sterling and Union, Colorado. UPRR will retain full service trackage rights to operate over the Sterling-Union line and to serve on-line shippers. BNSF’s acquisition of the Sterling-Union line is not involved in this proceeding. The details of the transaction are explained in the Key Proposed Terms attached as Exhibit 1.

Idaho, Illinois, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming.

B. Transferor

Transferor, BNSF, a Delaware Corporation, is a Class I railroad, subject to the provisions of the Act. BNSF owns and operates lines of railroad in 28 States, including the States of Alabama, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Washington, Wisconsin, and Wyoming, and in Canada. The trackage covered in this petition is in Missouri.

C. Petitioner's Representative

Counsel representing Union Pacific Railroad Company is:

Linda J. Morgan
Covington & Burling
1201 Pennsylvania Ave., N.W.
Washington, DC 20004

II. BACKGROUND

UPRR will acquire approximately 23.7 miles of BNSF's line between Rockview and Sikeston, Missouri. BNSF will retain trackage rights, including the exclusive right to serve all local industries on the Line, except for industries accessed by the Sikeston generating station track, which both BNSF and UPRR will serve. UPRR already possesses permanent overhead trackage rights on the Line limited to traffic originating from or destined to industries on UPRR's line between Lilbourn and New Madrid, Missouri. Pursuant to these trackage rights, UPRR currently operates approximately one train per day over the Line.

Through the transaction, UPRR will obtain the right to dispatch and maintain the Line, to use the line for overhead traffic, and to jointly serve industries accessed from the Line by the Sikeston generating station track. To facilitate operations on the Line, UPRR will also build a short connecting track at Sikeston and reconfigure existing connecting tracks at Rockview and Dexter to more efficiently integrate the Line with UPRR's existing rail lines.

BNSF will retain full-service trackage rights on the Line for 99 years, with the right to renew these trackage rights for successive 99-year periods. BNSF's retained trackage rights will include both non-exclusive overhead rights, and exclusive rights to serve local industries on the Line, except for jointly served industries accessed by the Sikeston generating station track.

The purpose of this transaction is to foster efficiency and expand competitive opportunities by facilitating UPRR's implementation of a directional running plan for through rail traffic between Rockview, Missouri and Dexter, Missouri on UPRR's St. Louis-Houston corridor. UPRR's St. Louis-Houston corridor currently includes a single-track main line between Rockview and Dexter. UPRR currently dispatches approximately 20-21 northbound trains and 20-21 southbound trains per day on the existing Rockview-Dexter line. UPRR also owns a single-track line between Dexter and Sikeston, Missouri. UPRR currently operates one train per week on its Dexter-Sikeston line.

Acquisition of the Line, in combination with UPRR's existing Dexter- Sikeston line, will provide UPRR with a second single-track main line between Rockview and Dexter. UPRR expects to shift approximately 10-11 southbound trains per day from its existing Rockview-Dexter line to a Rockview-Sikeston-Dexter route. This shift in routing will reduce congestion on the Rockview-Dexter line. Upon completion of the transaction, the number of

southbound trains operating on UPRR's existing Rockview-Dexter route will decrease from between 20-21 trains to approximately 10-11 trains. Implementation of directional running between Rockview and Dexter will thus expand capacity and increase efficiency on UPRR's St. Louis-Houston corridor, and do so at a lower cost than double-tracking UPRR's existing Rockview-Dexter line.

III. THE REQUESTED EXEMPTION SHOULD BE GRANTED

Under Section 10502(a), the Board exempts a transaction if regulation under an otherwise applicable provision of the statute:

- (1) is not necessary to carry out the transportation policy of Section 10101 of [Title 49]; and
- (2) either (A) the transaction or service is of limited scope, or (B) the application in whole or in part of the provision is not needed to protect shippers from the abuse of market power.

49 U.S.C. § 10502(a). "There is no doubt that the exemption provision was intended to give [the Board] very broad authority to eliminate unnecessary regulation." Coal Exporters Ass'n v. United States, 745 F.2d 76, 82 (D.C. Cir. 1984) (discussing Section 10505(a), the substantively identical predecessor section to Section 10502(a)), cert. denied 471 U.S. 1072 (1985). The Board must grant an exemption if a transaction satisfies the requirements of Section 10502(a). UPRR's acquisition of the Line should be exempt from regulation.

A. Regulation of the Proposed Acquisition is not Necessary to Carry Out the Rail Transportation Policy.

The acquisition will promote significant provisions of the rail transportation policy and will not run counter to any of the goals of this policy. Detailed scrutiny under Sections 11323, et. seq., is not necessary.

To determine whether a rail line transaction must be regulated in order to carry out national rail transportation policy, the Board must consider the policy of the underlying statute from which exemption is sought. Ind. R.R. -- Petition for Exemption -- Acquisition & Operation -- Ill. Central R.R. -- Line Between Sullivan, IN and Browns, IL, 6 I.C.C. 2d 1004, 1006 (1990) ("Ind. R.R."), aff'd sub nom. Village of Palestine v. ICC, 936 F.2d 1335 (D.C. Cir. 1991), cert. denied, 502 U.S. 1030 (1992). The proposed acquisition transaction does not involve the merger or control of two or more Class I railroads. Thus, absent exemption, 49 U.S.C. § 11324(d) would provide the governing approval standard. This section requires the Board to approve a transaction unless it finds both:

(1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and

(2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

49 U.S.C. § 11324(d).

This acquisition transaction does not have any anticompetitive effects. Local industries located on the Line will continue to be served by BNSF, and BNSF will retain the right to use the Line for overhead traffic. See Norfolk S. Ry. -- Purchase Exemption -- Union Pac. R.R., Finance Docket No. 33609 (STB Decision served Oct. 29, 1998), at 3 (finding no anticompetitive effect where "transaction represents only a change in owners"); S.C. Central R.R. -- Purchase -- CSX Transp., Inc. Line Between E. Greenville and Laurens, SC, Finance Docket No. 31469 (ICC Decision served July 30, 1990), at 3 (finding no anticompetitive effect where the number of competitive alternatives available to shippers remains unchanged).

Acquisition of the Line will also enhance competition by enabling UPRR to implement a directional running plan, which will create greater efficiency in UPRR's service over its St. Louis-Houston corridor. See Tex. Mexican R.R. -- Purchase Exemption -- Union Pac. R.R., Finance Docket No. 33914 (STB Decision served Dec. 11, 2000), at 5 (approving exemption where transaction would encourage efficient traffic management). UPRR plans to use the Line for southbound train operations between Rockview and Dexter, Missouri, with trains operating over the Line between Rockview and Sikeston, and then over existing UPRR trackage between Sikeston and Dexter. Northbound trains, and some southbound trains, will continue to utilize UPRR's current Dexter-Rockview line. Directional routing will reduce congestion on UPRR's lines, thereby improving service for UPRR customers and enhancing UPRR's ability to compete with other providers of non-railroad freight transport.

UPRR's acquisition of the line also promotes other significant provisions of the rail transportation policy. The transaction will promote development of a sound and efficient rail transportation system. 49 U.S.C. § 10101(4), (5), (9). And, an exemption under Section 10502(a) will minimize the need for federal regulatory control over this transaction and expedite resolution of the regulatory decision. Id. § 10101(2), (15).

B. The Transaction is of Limited Scope.

The proposed acquisition is clearly of limited scope. The Line is only 23.7 miles in length. Previous Board and Interstate Commerce Commission decisions hold acquisition and operation transactions of even greater length to be limited in scope. See, e.g., Southwestern R.R. -- Acquisition Exemption -- The Atchison, Topeka and Santa Fe Ry., Finance Docket No. 32471 (ICC Decision served April 22, 1994), at 2 (acquisition of 24.85 mile segment of track); Ind. R.R., 6 I.C.C. 2d at 1011 (acquisition of 90.3 miles of track). Additionally, the transaction will

be accomplished without the issuance of new securities or the restructuring of either UPRR's or BNSF's rail operations. See, e.g., Village of Palestine, 936 F.2d at 1340-41 (D.C. Cir. 1991); CSX Transp., Inc. -- Acquisition and Lease Exemption -- Pittsburgh & Lake Erie R.R., Finance Docket No. 31827 (ICC Decision served June 28, 1991), at 12 (acquisition of 61 miles of track without new securities issuances or changes in operations).

C. **Regulation of the Transaction is Not Necessary to Protect Shippers From an Abuse of Market Power.**

Even if the Board were to find that the proposed transaction is not limited in scope, the transaction should nonetheless be exempted because the proposed acquisition will not result in any abuse of market power by either UPRR or BNSF. The transaction represents only a change in owners of the Line, and there will be no loss of rail competition. BNSF will retain full-service trackage rights over the line, and the exclusive right to serve most local industries on the line. See Norfolk S. Ry. -- Purchase Exemption -- Union Pac. R.R., Finance Docket No. 33609 (STB Decision served Oct. 29, 1998), at 3 (finding no risk of abuse of market power where "transaction represents only a change in owners," "existing . . . operations will be continued," and "there will be no loss of rail competition").

IV. **LABOR PROTECTION**

Under 49 U.S.C. § 10502(g), the Board may not use its exemption power to relieve a rail carrier of its statutory obligation to protect the interests of employees. Therefore, as a condition to granting the exemption, petitioners have no objection to imposition of the labor protective conditions normally imposed in Section 11323 transactions. See New York Dock R. - Control - Brooklyn Eastern Dist. Terminal, 360 I.C.C. 60, aff'd sub nom. New York Dock Ry. v. United States, 609 F.2d 83 (2d Cir. 1979).

V. ENVIRONMENTAL CONSIDERATIONS

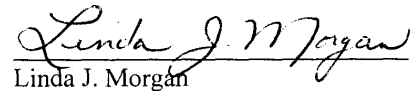
The Board's environmental review process has already been triggered by UPRR. At UPRR's request, The Board's Section of Environmental Analysis ("SEA") has agreed to the appointment, pursuant to the Board's rules at 49 C.F.R. Part 1105, of a third-party contractor to work with SEA to undertake all appropriate environmental reviews and to assist in SEA's preparation of required documentation under the National Environmental Policy Act.

VI. CONCLUSION

For the foregoing reasons stated above, UPRR requests the Board to grant an exemption from the provisions of 49 U.S.C. §§ 11323, et seq., for acquisition and operation of the Line. Further, should the Board decide to grant this Petition, UPRR requests that the Board do so on a conditional basis, subject only to the completion of any environmental review that is ongoing at the time of such Board action. Such conditional approval will facilitate UPRR's ability to move forward with engineering and other plans relating to the Line. As the Board has done in other, similar proceedings, the Board could subsequently issue a final decision on this Petition upon completion of the environmental review process, and make that decision effective as of the date of its issuance. See, e.g., Mo. Mining, Inc. v. ICC, 33 F.3d 980, 982 (8th Cir. 1994); Alamo N. Tex. R.R. - Construction and Operation Exemption - Wise Cty., TX, Finance Docket No. 34002 (STB Decision served Nov. 16, 2001), at 3.

Respectfully submitted,

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Attorneys for Union Pacific Railroad
Company

VERIFICATION

George Sturm, General Manager, Joint Facilities and Passenger Operations of Union Pacific Railroad Company, under penalty of perjury, declares and verifies that he has read the foregoing Petition for Exemption in Finance Docket No. 34672, knows the facts stated therein, and that said facts are true as stated.

Dated: March 10, 2005


George Sturm

CERTIFICATE OF SERVICE

I certify that I have this day served a copy of the foregoing document upon the following by Federal Express, overnight delivery:

Richard E. Weicher, Esq.
The Burlington Northern and
Santa Fe Railway Company
547 W. Jackson Boulevard
Suite 1509
Chicago, IL 60661

Dated: March 11, 2005

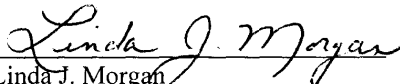

Linda J. Morgan

EXHIBIT 1

UPRR ACQUISITION OF BNSF LINE BETWEEN
ROCKVIEW AND SIKESTON – KEY PROPOSED TERMS

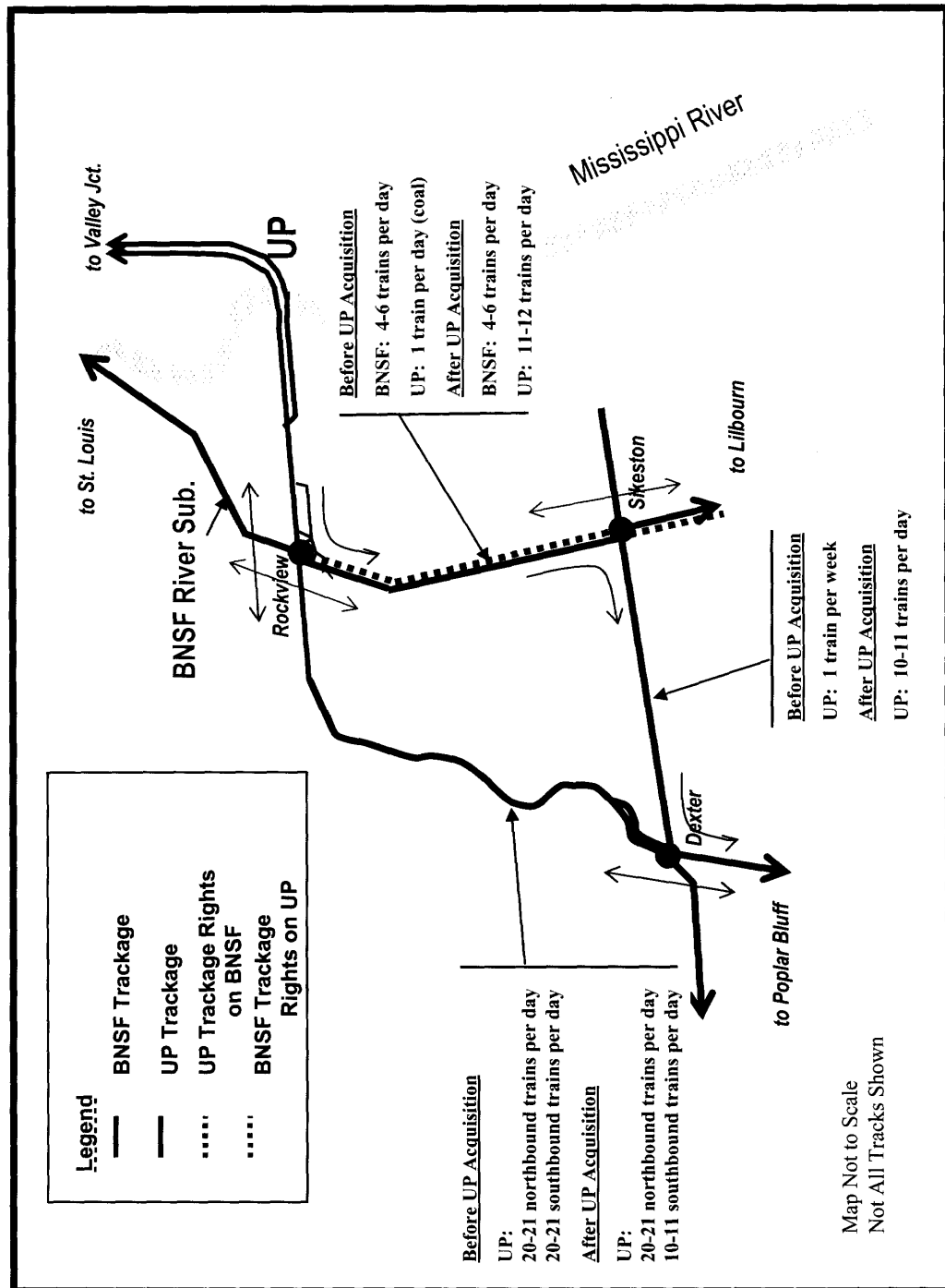
1. UP will acquire from BNSF the BNSF 23.7 mile line between BNSF Milepost 165.5 near Rockview, MO and BNSF Milepost 141.80 near Sikeston MO (the "Line") in exchange for BNSF's acquisition of a UP line between Sterling and Union, CO.¹
2. As part of the UP acquisition, UP will obtain the right to dispatch and maintain the Line, to use the Line for overhead traffic, and to serve industries accessed by the Sikeston generating station track from the Line. The agreement will not otherwise expand or diminish either party's commercial access to new or existing industries on the Line.
3. BNSF will retain trackage rights on the Line for 99 years, with the right to renew for successive 99-year periods. BNSF's retained trackage rights will include non-exclusive overhead rights and exclusive rights to serve local industries on the Line, except for industries accessed by the Sikeston generating station track, which both BNSF and UP will be able to serve from the Line.
4. BNSF's retained trackage rights on the Line will be at no cost for up to 447,353,480 gross ton miles in a given year ("No Cost GTM's"). BNSF shall pay UP 2.2 mills per GTM, adjusted annually by the annual adjustment mechanism in the BNSF Settlement Agreement², for all gross ton miles over and above the No Cost GTM's.
5. BNSF's No Cost GTM's shall be an offset to and, if unused, accumulated and carried forward by UP to future years for application as a one for one credit toward future UP gross ton miles on the following BNSF line segments: (i) the Sterling-Union CO line (ii) any other portion of BNSF's line between Denver and Union, CO (to the extent that trackage rights beyond those contained in the proposed UP-BNSF Front Range Railroad Infrastructure Rationalization are ever granted) and (iii) BNSF's line between Sikeston and Lilbourn, MO.
6. The cost of any Changes in and/or Additions to the Line made in the first 12 months after the acquisition shall be shared by BNSF and UP based on the projected GTM's of BNSF and UP for the first 12 months of UP's ownership usage, adjusted for actual GTM's at the end of the 12-month

¹ BNSF's acquisition of the UP Sterling-Union, CO line is not involved in this proceeding. BNSF will seek approval or exemption of the Sterling-Union acquisition in a separate proceeding.

² See Section 12 of the UP-BNSF Settlement Agreement dated September 25, 1995, as amended and restated.

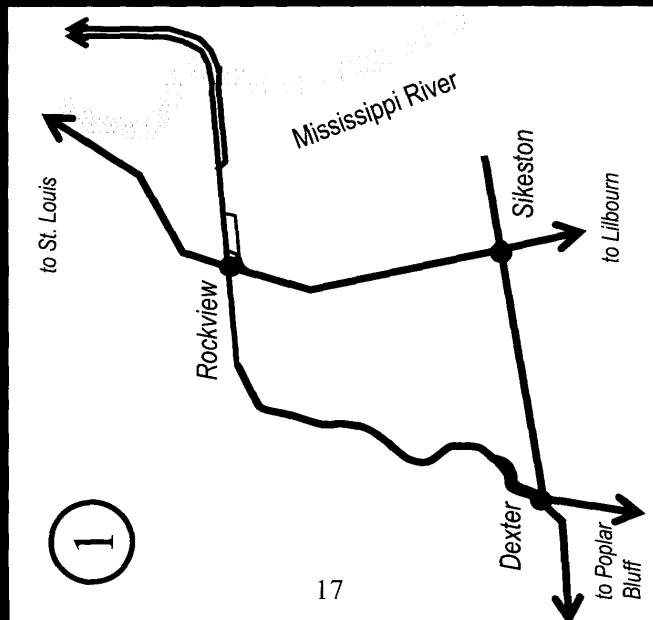
period. Any subsequent Changes in and/or Additions to the Line shall be shared based of GTM usage of the Line for the 12 month period immediately prior to the month work on the project is commenced. The use of the Line by any third party shall be attributed to UP for purposes of computing relative GTM's for purposes of allocating costs of Changes in and/or Additions to the Line.

EXHIBIT 2

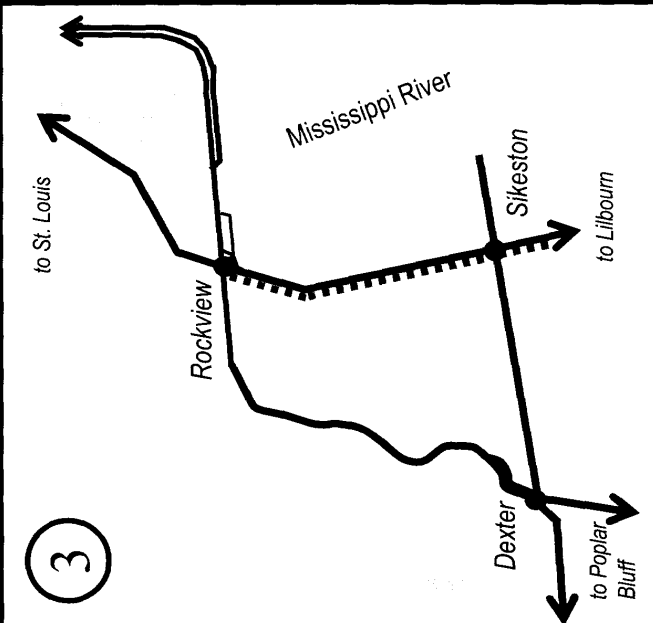


Evolution to UP Ownership of Rockview-Sikeston Line

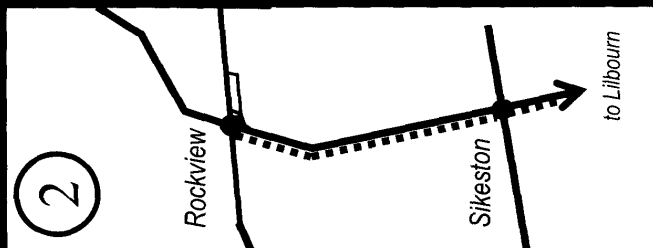
Today



3



2



Legend

- BNSF Trackage
- UP Trackage
- UP Trackage Rights on BNSF
- BNSF Trackage Rights on UP

Rockview-Lilbourn
Trackage Rights

UP Will Modify and/or Build Connecting Tracks to Facilitate the New Route

